IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.4912 OF 2005

Mahesh Deepak Kanojiya ...Applicant
Vs.
The Intelligence Officer,
N.C.B. Mumbai & Anr. ...Respondents

Shri Taraq K. Sayed for the Applicant.
Shri D. N. Salvi for the Respondent No.1.
Ms Rajeshree Gadhvi, A.P.P. for the State.

CORAM : A. S. OKA, J.
DATE : OCTOBER 03, 2005.

P.C.:

1. This is an Application for bail where an offence is registered under section 29 read with Section 8(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as the said Act of 1985).

2. On the basis of the specific intelligence, the Officers of NCB, Mumbai kept surveillance at Wadala bus stop, Gate No.4, Wadala, Mumbai at about 05.00 p.m. on 24th August, 2004 and intercepted one Omprakash Deepak Kanojiya and Manisha Shivram Jadhav. The search of plastic carry bag which was carried by Omprakash showed that there were two black polythene carry-bags containing two transparent packets containing some light brown colour powdered substance and another black polythene bag containing three

transparent polythene carry bags containing some light brown powdered substance. It was found that the said Omprakash was carrying 5 kgs. of heroine.

3. Further on the basis of the specific intelligence, the officers of NCB on 26th August, 2004 apprehended two persons while entering a flat in a building situation in village Sagarli, Kalyan Shil Road, District Thane. One of them was the present Applicant. Both of them were carrying shoulder bag. In the said two shoulder bags, it is alleged that 10 kgs. of heroine was found.

4. As the Applicant was juvenile, he was produced before the learned Metropolitan Magistrate, Juvenile Court, Umarkhadi, Mumbai, the Application made on behalf of the Applicant for bail was rejected by the Juvenile Court.

5. The learned Counsel appearing for the Applicant urged before me that the Applicant has been kept in custody in violation of the Juvenile Justice (Care and Protection of Children) Act, 2000 (hereinafter referred to as the said Act of 2000). He submitted that there was no material before the learned Magistrate to come to the conclusion that the

release of the Applicant was likely to bring him into association with any criminals or exposing to any moral, physical or psychological danger. He placed reliance on a decisions of the Apex Court reported in **2005(3) Supreme Court Cases, Page 551 (Pratap Singh Vs. State of Jharkhand & Anr.), (2000)6 Supreme Court Cases, Page 759 (Raj Singh Vs. State of Haryana) and decision of this Court reported in 2003(3) Crimes, Page 311 (Dattatraya G. Sankne Vs. State of Maharashtra & Ors.).** He submitted that the Applicant who was admittedly found to be juvenile cannot be detained till the conclusion of the trial which will take a very long time.

6. Shri Salvi appearing for the Respondent No.1 invited my attention to the affidavit of Shri M.V.Henry, Intelligence Officer, NCB, Mumbai. He submitted that the Applicant's mother is involved in an offence under said Act of 1985. He pointed out that another brother of the Applicant is involved in similar crime and is absconding. He submitted that the learned Magistrate was right in passing the order refusing to grant relief under section 12 of the said Act of 2000.

7. I have considered the submissions.

Compilation of documents produced by the Advocate appearing for the Respondent No.1 shows that on 11th January, 2005, the learned Special Judge, CBI passed an order directing that the Applicant shall be taken before the Juvenile Justice Court, Mumbai established under the said Act of 2000 for further inquiry as the learned Special Judge found that the Applicant was the juvenile. Accordingly, on 13th January, 2005 the Applicant was produced before the learned Metropolitan Magistrate holding the charge of Juvenile Court who directed that the Applicant shall be committed to the observation home till 27th January, 2005 and he called for the the social investigation report. The Application for bail was made on behalf of the Applicant before the learned Magistrate. The learned Magistrate held that under section 12, the Applicant was entitled to be released on bail. However, the Applicant cannot be released on bail as there was a reasonable apprehension that if he is released on bail, there is likelihood of brining the Applicant into association with known criminals or exposing him to moral danger.

8. Section 12(1) of the said Act of 2000 reads thus:

> 12. Bail of juvenile.-(1) When any person accused of a bailable or non-bailable offence, and apparently a juvenile, is arrested or detained or appears or is brought before a Board, such person shall, notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) or in any other law for the time being in force, be released on bail with or without surety but he shall not be so released if there appear reasonable grounds for believing that the release is likely to bring him into association with any known criminal or expose him to moral, physical or psychological danger of that his release would defeat the ends of justice.

9. In the present case, the affidavit filed on behalf of the Respondent No.1 discloses that the Applicant's elder brother Kailash is involved in the similar offence and is absconding. His other brother Omprakash is an accused in the same case who was found in possession of large quantity of heroine. It is stated that the Applicant's mother Chauridevi was also

involved in Narcotic Drug and Psychotropic Substances offence involving 200 gms. of heroin in the year 1990.

10. If the Applicant is enlarged on bail, there is every possibility that his release will bring him into contact with his brother Kailash who is absconding and his brother Kailash and his associates who are drug traffickers will attempt to persue their objective through the Applicant. As his mother and brothers are involved in the cases under said Act of 1985, there appears reasonable ground to believe that release of the Applicant will bring him into association with known criminals and will expose him to moral or psychological danger. I find no fault with the approach of the learned Metropolitan Magistrate. The decision of the Apex Court in case of Pratap Singh (Supra) and Raj Singh(Supra) will not help the Applicant as the procedure under the said Act of 2000 has been followed. The decision of the learned Single Judge in the case of Dattatraya holds that where juvenile was involved in a crime, normal rule would be to grant bail unless release would bring juvenile in contact with known criminals. In the present case, there is material on record to show that the Applicant who is the juvenile will be brought in contact with

his family members atleast two of whom are known criminals.

11. Hence, no case is made out for enlarging the Applicant on bail. Accordingly, Application is rejected.

JUDGE